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November 6, 2020

**VIA ECF**

Hon. James B. Clark, U.S.M.J.  
United States District Court  
Martin Luther King Building & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07101

**Re: DVL, Inc. and DVL Kearny Holdings, LLC v. Congoleum Corporation and  
Bath Iron Works Corporation; U.S. District Court, District of New Jersey,  
Civil Action No. 2:17-cv-04261**

Dear Judge Clark:

DVL responds to the letters of Warren A. Usatine of November 3, 2020, submitted to the Court on behalf of Congoleum Corporation (“Congoleum” or the “Debtor”) (ECF No. 196) and from Ralph J. Marra, Jr. of November 4, 2020, submitted on behalf of Defendant, Bath Iron Works Corporation (“BIW”) (ECF No. 197).

Mr. Usatine’s letter incorrectly claims that DVL’s request to lift the discovery stay as to BIW only, is precluded by Congoleum’s bankruptcy filing and the automatic stay of 11 U.S.C. § 362(a). As Mr. Usatine knows, the automatic stay of 11 U.S.C. § 362(a) applies only to the Debtor, Congoleum, not to BIW. *See Maritime Electric Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d. Cir. 1991). (“the automatic stay is not available to non-bankrupt co-defendants of a debtor even if they are in a similar legal or factual nexus with the debtor”).<sup>1</sup> We find it unusual that Congoleum’s bankruptcy counsel would write a letter to the Court seeking to delay DVL’s claims against co-defendant BIW, a non-debtor and an entity that is not Mr. Usatine’s client. Less than one month ago, Congoleum, through other counsel specially appointed by the bankruptcy court,

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<sup>1</sup> DVL’s request to this Court to allow its action to proceed against BIW is entirely proper. Plaintiffs routinely request district courts to allow actions to proceed against non-debtor co-defendants of a bankrupt debtor. *See Hess Corp. v. Performance Texaco, Inc.*, 2008 U.S. Dist. LEXIS 94263 (M.D. Pa. 2008); *Stanford v. Foamex L.P.*, 2009 U.S. Dist. LEXIS 32405 (E.D.Pa. 2009); *Forcine Concrete & Constr. Co. v. Manning Equip. Sales & Serv.*, 2010 U.S. Dist. LEXIS 24739 (E. D. Pa. 2010).



argued forcefully that the bankruptcy court could not, and should not, hear its dispute with BIW. *See Bath Iron Works Corporation v. Congoleum Corporation*, United States Bankruptcy Court for the District of New Jersey, Adversary Proceeding No. 20-01439 (MBK), ECF Nos. 8, 9; *Bath Iron Works Corporation v. Congoleum Corporation*, United States District Court for the District of New Jersey, No 3:20-cv-14163-MAS, ECF No. 1. Now, in a complete reversal of its position, Congoleum seeks to obstruct DVL from moving forward against BIW and wants the bankruptcy court not only to rule on this dispute, but to do so in a manner specifically designed and intended to undermine DVL's claims against BIW in this action.

With respect to Mr. Marra's letter, Mr. Marra incorrectly states that DVL is seeking to have the Court lift the automatic stay from the Bankruptcy Code that applies to Congoleum. As noted above, this is not what DVL is requesting, as clearly stated in our letter to the Court of November 3, 2020. Rather, DVL requests that the Court lift the discovery stay as to BIW only, not as to Congoleum.

Concerning the proposed settlement pending between BIW and Congoleum referred to by Mr. Marra, DVL stands behind its position on that settlement as stated in its letter to the Court of November 3, 2020.

DVL restates its prior request that the stay of discovery be lifted as to BIW **only**.

If the Court would like to conference this matter, we will of course make ourselves available at Your Honor's convenience.

Respectfully,

/s/ Eitan D. Blanc

Eitan D. Blanc

Anthony R. Twardowski

cc: All counsel of record, via ECF.